



BOARD DECISION

RFR 2018-11 / RA18016

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA18016

500016 Alberta Ltd.

September 21, 2018

Background

On July 31, 2018, NRCB approval officer Lynn Stone issued Decision Summary RA18016 in relation to the confined feeding operation (CFO) proposed by 500016 Alberta Ltd. at NE 34-43-26 W4M in Ponoka County (County). 500016 Alberta Ltd. sought approval for a new 400 milking cow dairy (plus associated dries and replacements). The proposed CFO includes the construction of a new dairy barn, heifer barn, and a concrete liquid manure storage tank. The approval officer considered this application in Decision Summary RA18016 and issued an approval with conditions.

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), Requests for Board Review (RFRs) of Decision Summary RA18016 were filed by directly affected parties Debra Stott, Shelly Wright, and Blake and Rose Butterfield. All RFRs were filed within the 10-day filing deadline established by AOPA.

Following receipt of the RFRs, all parties were provided with copies of the requests, and notified of the Board's intent to meet and deliberate on this matter. Directly affected parties with an adverse interest to the matters raised in the RFRs were provided the opportunity to make a rebuttal submission in response. The Board did not receive any submissions that met the September 4, 2018 filing deadline.

The Board convened to deliberate on the RFRs on September 7, 2018.

Jurisdiction

The Board's authority for granting a review of an approval officer's decision is found in section 25(1) of AOPA, which states:

- 25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,*
- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or*
 - (b) schedule a review.*

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each RFR.

Documents Considered

The Board considered the following information:

- Decision Summary RA18016, dated July 31, 2018
- Approval RA18016
- Technical Document RA18016

- RFRs filed by:
 - Debra Stott
 - Shelly Wright
 - Blake and Rose Butterfield
- Ponoka County Municipal Development Plan
- Portions of the public file material maintained by the approval officer.

Board Deliberations

The Board met on September 7, 2018 to deliberate on the RFRs.

In its deliberations, the Board considered each RFR filed by the directly affected parties and the various issues raised. The Board must dismiss an application for review if, in its opinion, the issues raised in the RFR were adequately dealt with by the approval officer or the issues are of little merit. The issues raised in the RFRs include odour, dust, noise, traffic, and water quantity and quality. In addition, the RFRs raised issues related to the timing of the approval officer's decision in relation to potential amendments to the County's municipal development plan (MDP), whether the CFO is consistent with the County's current MDP, and the potential to limit the location of future residences on their property resulting from a provision of the current MDP.

Nuisance and Environmental Effects

In Decision Summary RA18016, the approval officer considered the issues raised by the directly affected parties related to odour, dust, noise, traffic, and water quantity and quality. The Board understands that the RFRs, like the statements of concern to the approval officer, raise concerns about the direct effects from the proposed CFO, as well as the cumulative nuisance and environmental effects associated with confined feeding operations. AOPA provides a province wide regulatory framework to manage CFO effects within agricultural communities. It does so by establishing regulatory siting, construction and operating standards that apply in relation to each application and operation. That said, and as noted by the approval officer, the Board has consistently stated that cumulative effects are not within its regulatory mandate. Approval officers and the Board must, however, ensure approvals issued under AOPA are consistent with regional plans under the *Alberta Land Stewardship Act* (ALSA). Under ALSA, cumulative effects are considered and provide for protection to surface water, groundwater and air quality. Cumulative effects under ALSA are not related to the concentration of any particular industry but rather the cumulative impact of all human activity on the landscape. Further, ALSA does not explicitly deal with cumulative effects resulting from nuisance impacts. To date, regional plans have been adopted by Cabinet for the Lower Athabasca and South Saskatchewan River basins. Ponoka County will be covered by the Red Deer River basin regional plan; this plan is in the development stage and currently not in effect.

AOPA responds to potential environmental effects through a point source regulatory approach. AOPA regulatory standards require manure collection and storage facilities to be constructed and operated in a manner that will protect surface and groundwater. AOPA regulations also include manure spreading provisions that recognize the value and importance of livestock manure as a fertilizer, and that provide protection to the environment. Manure spreading regulations reduce environmental risk through soil nutrient limits and spreading setbacks from common bodies of water.

The Board has reviewed the relevant components of the approval officer's public file material, as well as her analysis in Appendix B of Decision Summary RA18016, and finds that the approval officer adequately considered nuisance issues, and issues related to water quality and water quantity.

Cumulative effects associated with the number or concentration of confined feeding operations within any given area are not a relevant consideration under AOPA, and as such this issue is not under consideration by the Board and does not merit review.

MDP Issues

The RFRs raised three issues related to the County's MDP:

1. the timing of the approval officer's decision in relation to potential amendments to the County's MDP,
2. whether the CFO is consistent with the current MDP, and
3. the potential to limit the location of future residences on their property resulting from a provision of the current MDP.

Should the approval officer have waited for Ponoka County's MDP amendments?

Both the Debra Stott and Shelley Wright RFRs assert that the approval officer acted inappropriately or in bad faith by issuing the RA18016 approval while the County was in the process of reviewing its MDP. Debra Stott's RFR indicated that some of the proposed amendments to the County's MDP may create a CFO exclusion zone that, if adopted, would include the proposed CFO site in the NE 34-43-26 W4M. The approval officer record includes a letter to the approval officer from Ponoka County dated June 26, 2018 asking that the approval officer defer her decision until "our planning review process is complete". The approval officer record also includes the County's May 4, 2018 letter to the Minister of Agriculture and Forestry asking for "a 90 day moratorium on further applications within this area to allow us the time necessary to complete our work." The Board notes that the approval officer record includes a letter from the Minister declining the County's request that the NRCB not issue decisions for a 90 day period.

The Board does not find bad faith in the approval officer's choice to issue a decision when the County was in the process of reviewing its MDP. The NRCB's written policy and past Board decisions both direct the use of the MDP in place at the time the approval officer decision is issued. Furthermore, the approval officer issued her decision during the early stages of Ponoka County's review process. The Board notes that the County's website shows a public information meeting for the MDP amendments slated for October 2, 2018, a full nine weeks after the approval office issued her decision. The Board finds that the approval officer's choice to issue her decision using the MDP under force at the time is entirely consistent with standing NRCB policy, was done in the ordinary course of business, and does not warrant Board review.

Is the CFO location consistent with the current Ponoka County MDP?

The Shelley Wright RFR asserts that the approval officer failed to consider two water bodies (Lake Pofianga and McFadden/Sigistrom Lake) as lakes, with the result that the approval officer failed to find that the CFO was inconsistent with the MDP. Section 2.5 of the MDP states:

The County requests the NRCB not to allow CFO's closer than two miles to any lake unless the regulators are convinced that the manure management system is fail-safe and there is no reasonable risk of contamination of the lake. [emphasis added]

The approval officer determined that the water bodies were not lakes as they were not listed as lakes on either the County map or the relevant land titles, nor did the County identify any lakes in their

response to the approval officer. The Board notes that the approval officer's conclusion is further supported by the County's June 26 letter to the approval officer which stated that "the CFO meets the current municipal setbacks" and "is consistent with our existing Municipal Development Plan." That said, the Board finds that it is not necessary to determine whether the lakes referred to in the RFRs as Lake Pofianga or McFadden/Sigistrom Lake should be considered as lakes within the intended meaning of section 2.5. The Board interprets the "unless" provision in the section to establish a setback requirement only when the NRCB determines there is a reasonable risk of contamination to the lake. Having regard for the approval officer's comprehensive consideration of the planned facilities and the included approval conditions, the Board finds that the proposed manure management facilities associated with the CFO meet all regulations under AOPA; and, there is no reasonable risk of contamination to either water body. Further, the Board finds no evidence submitted or suggested in the RFRs that contradict this finding.

Although not required for this decision, the Board notes that the distance of the proposed CFO facilities to Lake Pofianga and McFadden/Sigistrom Lake substantially exceed the AOPA calculated minimum distance separation to even the most sensitive receptor residence. The purpose of the AOPA minimum distance separation is to establish a calculated setback from manure storage facilities to residences in order to manage nuisances associated with CFOs. The CFO facilities are approximately 3000 m from Lake Pofianga and 2700 m from McFadden/Sigistrom Lake. By way of reference, the calculated minimum distance separation for the proposed CFO to residences ranges from 449 m to a rural residence to 1198 m to residences in large-scale country residential, rural hamlet, village, town or city. In past decisions, the Board has consistently respected municipal setbacks to public recreational facilities when it finds that municipal development plan setbacks are reasonable and established to support current and future land uses. When assessing MDP land use provisions that deal strictly with environmental protection related to CFOs, the Board will generally rely on AOPA standards as they provide the statutory tool to accomplish those objectives.

Future Residential Development

Finally, the Board considered issues raised in the RFRs related to the potential of approving this CFO to limit the development of future residences on their property resulting from MDP section 2.7 that states "the county will protect existing CFOs by not normally issuing a development permit for a new residence within the Minimum Separation Distance of an existing or approved CFO....". This section may limit a neighbouring landowner's ability to obtain a development permit from the County in the future. AOPA establishes that minimum separation distance is calculated to residences that exist at the time a proponent files his initial application with the NRCB. The Board finds that this issue has no merit in the context of a NRCB review under AOPA as residential development applications rest exclusively with the planning and development jurisdiction of the County.

Decision

As a result of the Board's deliberations, the Board finds that the issues raised in the filed Requests for Review either have no merit, or were adequately considered by the approval officer, and therefore does not direct any matters to a hearing. The RFRs are denied.

DATED at EDMONTON, ALBERTA, this 21st day of September, 2018.

Original signed by:

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Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.